

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

EXAMINATION REPORT
OF
INDIANA WAR MEMORIALS FOUNDATION
April 13, 2005 to December 31, 2006



FILED
12/12/2007

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OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Executive Director	Courtney Wright	04-13-05 to 12-31-07
President of the Board	Brian Regan R. William Sweeney G. Donald Steel	04-13-05 to 02-24-06 02-24-06 to 10-05-07 10-05-07 to 12-31-08



STATE OF INDIANA

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INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE INDIANA WAR MEMORIALS FOUNDATION

We have examined the financial information presented herein of the Indiana War Memorials Foundation, for the period of April 13, 2005 to December 31, 2006. The Foundation's management is responsible for the financial information presented herein. Our responsibility is to express an opinion based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and, accordingly, included examining, on a test basis, evidence supporting the financial information presented herein and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion.

In our opinion, the financial information referred to above present fairly, in all material respects, the financial information of the Foundation for the years ended December 31, 2005 and 2006, based on the criteria set forth in the uniform compliance guidelines established by the Indiana State Board of Accounts.

STATE BOARD OF ACCOUNTS

October 23, 2007

INDIANA WAR MEMORIALS FOUNDATION
SCHEDULES OF RECEIPTS, DISBURSEMENTS, AND CASH AND INVESTMENT BALANCES
As Of And For The Years Ended December 31, 2005 and 2006

	<u>2005</u>	<u>2006</u>
Cash and investments, January 1	\$ 726,875	\$ 712,799
Total receipts	<u>44,511</u>	<u>242,881</u>
Total disbursements	<u>58,587</u>	<u>180,805</u>
Excess of receipts over (under) disbursements	<u>(14,076)</u>	<u>62,076</u>
Cash and investments, December 31	<u>\$ 712,799</u>	<u>\$ 774,875</u>

The accompanying notes are an integral part of the financial information.

INDIANA WAR MEMORIALS FOUNDATION
NOTES TO FINANCIAL INFORMATION

Note 1. Introduction

The Foundation was authorized and established under Public Law 17-2005 effective April 13, 2005, which retroactively approved all financial transactions of the Foundation from inception in 2000 to the enactment of the law. The Foundation is established as a 501(c)(3) Corporation. The Foundation was established for the benefit of, to perform the functions of, and to carry out the purposes of the Indiana War Memorials Commission. The Foundation provides cultural and recreational services.

Note 2. Fund Accounting

The Foundation uses funds to report on its cash and investments and the results of its operations on a cash basis. Fund accounting is designed to demonstrate legal compliance and to aid financial management by segregating transactions related to certain governmental functions or activities.

Note 3. Deposits and Investments

Deposits, made in accordance with Indiana Code 5-13, with financial institutions in the State of Indiana at year end were insured by the Federal Depository Insurance Corporation. This includes any deposit accounts issued or offered by a qualifying financial institution.

The Foundation does not have a formal investment policy. Investment decisions are made by the Board in official board meetings. The Foundation has investments in the following investment types and amounts as of December 31, 2006:

Short-term U.S. treasury securities	\$ 107,519
U.S. government agency mortgage securities	168,752
Stock mutual funds	420,875
Bond mutual funds, both corporate and U.S. treasury	<u>58,939</u>
Total	<u><u>\$ 756,085</u></u>

Note 4. Gift Shop Receipts

The Gift Shop and Gift Shop funds were transferred from the Indiana War Memorials Commission to the Indiana War Memorials Foundation effective January 1, 2006. Total Receipts for 2006 include \$28,279.61 that represents the beginning cash balance of the Gift Shop account on January 1, 2006.

Note 5. Subsequent Event

Administration of the Gift Shop, Facility Rentals, Tower Elevator fees and Donation box revenues was transferred from the Indiana War Memorials Foundation back to the Indiana War Memorials Commission effective October 5, 2007. All related expenses and revenues will be the responsibility of the Indiana War Memorials Commission.

INDIANA WAR MEMORIALS FOUNDATION
EXAMINATION RESULTS AND COMMENTS
December 31, 2006

INAPPROPRIATE EXPENDITURES OF PUBLIC FUNDS

As stated in the Indiana War Memorials Commission Report B14087, the Indiana War Memorials Foundation used some of its funds for food, parties, flowers, and alcoholic beverages. These are considered personal in nature and are an inappropriate use of public funds. Foundation funds should not be used for personal use, but for the needs of the Indiana War Memorials. The total dollar amount of items tested during the examination period that are considered personal in nature is \$1,607.

The Foundation Articles of Incorporation [AOI] Section 4.1(d) states: "The specific purposes for which this Corporation is organized are . . . To operate for the benefit of, to perform the functions of, and to carry out the purposes of the Indiana War Memorials [Commission]."

Public funds may not be used to pay for personal items or for expenses which do not relate to the functions and purposes of the governmental unit.

DAILY DEPOSITS

The Indiana War Memorials Foundation did not deposit receipts for all of its revenue sources within the following business day.

Indiana Code 5-13-6-1(b) states in part: ". . . all public funds . . . shall be deposited with the treasurer of state, or an approved depository selected by the treasurer of state not later than the business day following the receipt of the funds."

ACCOUNTING RECORDS

The Indiana War Memorials Foundation does not maintain a general ledger to record expenditures and revenues by category.

Each agency, department, institution or office should maintain an effective and accurate accounting system for subsidiary and supplementary records, and should maintain and make available for audit documentation supporting the validity and accountability of monies received or disbursed.

Controls over the receipting, disbursing, recording, and accounting for the financial activities are necessary to avoid substantial risk of invalid transactions, inaccurate records and financial statements, and incorrect decision making. An agency's control environment consists of the overall attitude, awareness and actions of management and the governing board or commission. This would include establishing and monitoring policies for developing and modifying accounting systems and control procedures.

POTENTIAL CONFLICT OF INTEREST

The current President of the Indiana War Memorials Foundation Board was elected as a member of the Board on December 22, 2005, and became President on October 5, 2007. This Board President is also an owner and a director of the Hoosier Trust Company. Hoosier Trust Company has a contract with the Indiana War Memorials Foundation to serve as the brokerage agent and custodian of all of the Foundation's monetary assets.

Indiana Code 35-44-1-3(a) states: "A public servant who knowingly or intentionally: (1) has a pecuniary interest in; or (2) derives a profit from; a contract or purchase connected with an action by the governmental entity served by the public servant commits conflict of interest, a Class D felony."

INDIANA WAR MEMORIALS FOUNDATION
EXIT CONFERENCE

The contents of this report were discussed on November 20, 2007, with Donald Steel, President of the Board; Sabrina Young, Vice President of the Board; and Bill Sweeney, former President of the Board. The official response has been made a part of this report and may be found on pages 8 through 10.

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November 30, 2007

VIA EMAIL (swright@sboafe.in.gov) AND VIA HAND DELIVERY

Mr. Scott Wright
Field Examiner
Indiana State Board of Accounts
302 W. Washington St., Room E 418
Indianapolis, IN 46204-2765

Re: OFFICIAL RESPONSE on behalf of the Indiana War Memorials
Foundation, Inc., to Examination Review and Comments
Period Examined: April 13, 2005 to December 31, 2006

Dear Mr. Wright:

This firm represents the Indiana War Memorials Foundation, Inc. (the "Foundation"). In response to the November 20, 2007, Exit Conference, the Foundation selects Option 4 and provides the following official response. The Foundation's response is in two parts.

1. Expenditures of Public Funds, Daily Deposits and Accounting Records.

Because the Foundation is specifically made subject to SBA audit, the Foundation agrees to comply with the Review Comments regarding Expenditures of Public Funds, Daily Deposits and Accounting Records. Thank you for bringing these matters to the Foundation's attention.

2. Potential Conflict of Interest.

The remaining item in the Examination Review and Comments is the observation that the President of the Foundation's board, Mr. G. Donald Steel, is associated with a company that also provides brokerage and asset custodial services to the Foundation and the related claim that this arrangement violates Indiana Code 35-44-1-3. The Foundation respectfully disagrees. Indiana Code 35-44-1-3 provides:

A public servant who knowingly or intentionally (1) has a pecuniary interest in; or
(2) derives a profit from a contract or purchase connected with an action by the

governmental entity served by the public servant commits conflict of interest, a Class D felony.

Id.

This statute does not apply to the Foundation for at least two reasons. First, the Foundation is not a "governmental entity." Indiana Code 35-41-1-12 defines "governmental entity" to include

- (1) The United States or any state, county, township, city, town, separate municipal corporation, special taxing district, or public school corporation;
- (2) Any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of any of these entities; or
- (3) A state-assisted college or state-assisted university.

Id. The Foundation is an Indiana nonprofit corporation. It is not a unit of government listed in subsections (1) and (2) or a state assisted college or university described in subsection (3). Nor is the Foundation an "instrumentality" of any of the governmental units described in subsection (2), including the Indiana War Memorials Commission. While the Indiana Code does not define the term "instrumentality," Indiana caselaw treats one entity as the instrumentality of another upon proof of factors such as the absence of corporate records, the commingling of assets, and the sharing of common principal officers, directors and employees. See, e.g., Oliver v. Pinnacle Homes, Inc., 769 N.E.2d 1188, 1192 (Ind. Ct. App. 2002). None of those factors is present here: the Foundation maintains separate records, does not commingle assets, and does not share officers, directors or employees with the Indiana War Memorials Commission. Thus, Indiana Code 35-44-1-3 does not apply because the Foundation is not a governmental entity.

Second, and independently, Indiana Code 35-44-1-3 also does not apply because Mr. Steel is not a "public servant." Indiana Code 35-41-1-24 defines a public servant as a person who

- (1) Is authorized to perform an official function on behalf of, and is paid by, a governmental entity;
- (2) Is elected or appointed to office to discharge a public duty for a governmental entity; or
- (3) With or without compensation, is appointed in writing by a public official to act in an advisory capacity to a governmental entity concerning a contract or purchase to be made by the entity. The term does not include a person appointed by the governor to an honorary advisory or honorary military position.

Id.

Subsection (1) does not apply because no governmental entity pays Mr. Steel and because he does not perform any official function for a governmental entity. Subsection (2) does not apply because Mr. Steel has not been elected or appointed to any public office; rather, he chairs the board of an Indiana nonprofit corporation. Subsection (3) does not apply because Mr. Steel has not been appointed to his post by any public official to advise regarding contracting or purchasing.

The Foundation appreciates this opportunity to respond to your remarks as examiner. Mr. Steel also appreciates your follow up email yesterday. If there are questions or comments regarding the matters addressed in this letter to me, please direct them to me. We would be happy to respond. Best wishes.

Sincerely,

BAKER & DANIELS

By 
Scott D. Himself